

REMARKS

In view of the following remarks, the Examiner is respectfully requested to allow Claims 1 to 26, the only claims pending and currently under examination in this application.

The rejection of Claims 1 – 18 under 35 U.S.C. 102(b) as allegedly being anticipated by Meyer et al. (WO 93/17978) was maintained by the Examiner in the Advisory Action mailed November 16, 2005. In the Advisory Action, the Examiner maintained the rejections for the reasons previously asserted in the Final Rejection that was mailed on July 28, 2005. Namely, the Examiner asserted that the nitrous oxide set forth in WO 97/17978 (Meyer) is not an active agent and is not provided to treat pain.

The rejected claims recite the limitation that an NSAID is the only active agent. Meyer, on the other hand, is directed to administration mediums that include a first active agent and nitrous oxide. As set forth in the attached declaration of Dr. Bradley Galer, nitrous oxide is a known active agent.

In the enclosed declaration, Dr. Bradley Galer demonstrates that: (a) it is well-known in the art that nitrous oxide is an active agent; and (b) one of skill in the art would recognize nitrous oxide as an active agent. Accordingly, given the analgesic and antihyperalgesic properties of nitrous oxide, one of skill in the art would consider that the WO '978 publication teaches a topical formulation that includes at least two active agents: (1) an NSAID, and (2) nitrous oxide.

In addition, Claim 9 specifies that the topical formulation is a patch. Meyer fails to teach a patch formulation. Therefore, Claim 9 is even further distinguished from Meyer.

Accordingly, Meyer does not teach a topical formulation having an NSAID as the only active agent as set forth in the subject claims, but rather teaches a composition that includes at least two active agents: (1) an NSAID, and (2) nitrous oxide. Therefore, the Applicants respectfully request the rejection of Claims 1-18 over Meyer be withdrawn.

The rejection of Claims 19 – 23 under 35 U.S.C. §103(a) as being unpatentable over the disclosure of Meyer et al. (WO 93/17978) was also maintained in the Advisory Action.

As described above, the presently claimed invention is directed to a topical formulation that includes an NSAID as the only active agent. Meyer on the other hand is directed to a composition that includes at least two active agents: (1) an NSAID, and (2) nitrous oxide. Accordingly, Meyer does not teach or suggest every element of the subject invention and, therefore, a *prima facie* case of obviousness has not been established. In view of the above, the Applicants respectfully request that this rejection be withdrawn.

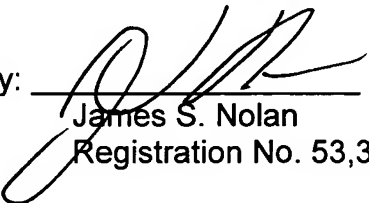
CONCLUSION

In view of the remarks, this application is considered to be in good and proper form for allowance and the Examiner is respectfully requested to pass this application to issue.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§1.16 and 1.17 which may be required by this paper, or to credit any overpayment, to Deposit Account No. 50-0815, reference no. CALD-007.

Respectfully submitted,

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Enc: Declaration of Dr. Bradley Galer

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